

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 9009 – SB 9041

October 28, 2021

SUMMARY OF BILL: Prohibits state funds from being appropriated, disbursed or expended by a public or private entity that implements a COVID-19 vaccination or mask-wearing requirement as a condition of entry onto the entity's premises.

Requires the Department of Finance and Administration to notify the entity that has implemented such requirements that the entity is no longer able to receive state funds and that any funds previously disbursed in the fiscal year are subject to recoupment by the Department.

ESTIMATED FISCAL IMPACT:

Other Fiscal Impact – The provisions of the bill could jeopardize federal American Rescue Plan funds allocated for state use relative to Local Education Agencies. The amount and timing of the funds that will be jeopardized is unknown and cannot reasonably be determined.

Assumptions:

- The American Rescue Plan Act of 2021 (ARP) includes language requiring LEAs to submit plans for the safe return of students to in-person instruction.
- The Interim Final Rule requires that an LEA's plan must include how it will maintain the health and safety of students, staff and teachers and the extent to which it has adopted policies and the description of such policies on each of the Center for Disease Control's (CDC) safety recommendations including: universal and correct wearing of masks. While the requirement does not mandate that an LEA adopt the CDC guidance, it does require the LEA to describe in its plan the extent to which it has adopted the key prevention and mitigation strategies identified in the guidance. LEAs are also to follow state health department guidance.
- CDC guidance updated August 5, 2021 for COVID-19 prevention in K-12 schools includes recommending the universal indoor masking by students (age 2 and older), staff, teachers, and visitors to K-12 schools, regardless of vaccination status.
- The state was required to submit and receive approval for a plan which included support to LEAs in safely reopening schools and sustaining their safe operation. In the state's plan for supporting LEAs, the first mitigation strategy is the universal and correct wearing of masks. The state Department of Education provided the following stance:
 - *Disseminate current CDC and Tennessee Department of Health (TDOH) guidance and recommendations for correct use of masks; provide technical*

assistance and training, when requested, on proper use of masks, including support to LEAs and schools on identifying adaptations and alternatives for staff and students who cannot correctly wear masks or need accommodations; provide direct support to LEA lead nurses to enable them to provide technical assistance to their schools in supporting this primary prevention strategy.

- The U.S. Department of Education issued a letter dated August 18, 2021 suggesting the federal Department of Education is monitoring that the state is meeting its federal fiscal requirements.
- It is unknown if and when the federal Department of Education would withhold or recoup federal funds as a result of the proposed legislation. Should the federal funds be jeopardized, it would most likely be a percentage of the state administrative or emergency needs which are approximately \$75 million.
- It is assumed all impacted entities will comply with the requirements in order to avoid the loss of state funding.
- If the proposed legislation prohibits a state or local entity or private business from following any future federal vaccination mandate, federal funding could be jeopardized.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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